



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0057
TELEPHONE (916) 327-6440 FAX (916) 324-2554
www.boe.ca.gov

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First District, San Francisco

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MICHELLE STEEL
Third District, Rolling Hills Estates

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State Controller

KRISTINE CAZADD
Executive Director

April 9, 2012

Dear Interested Party:

Enclosed is the Second Discussion Paper regarding the proposed regulation on *Transfers of Cigarettes and Tobacco Products Between Retail Stores Owned by the Same Person* and amendments to existing Cigarette and Tobacco Products Licensing Act Regulations 4601, 4603, 4604, and 4605. Discussion regarding the regulation and amendments is scheduled for the Board's **June 26, 2012, Business Taxes Committee meeting**.

However, before the regulation and amendments are presented at the Business Taxes Committee meeting, staff would like to provide interested parties the opportunity to discuss the proposal and present any suggested changes or comments. Accordingly, a meeting is scheduled in **Room 122 at 10:00 a.m. on May 4, 2012**, at the Board of Equalization; 450 N Street; Sacramento, California.

If you are unable to attend the meeting but would like to provide input for discussion at the meeting, please send your submission to the above address or fax to (916) 324-2554 before the March 4, 2012, meeting. If you are aware of other persons that may be interested in attending the meeting or presenting their comments, please feel free to provide them with a copy of the enclosed material and extend an invitation to the meeting. In addition, please feel free to publish this information on your website or otherwise distribute it to your association or members.

If you plan to attend the meeting or would like to participate via teleconference, please let us know by contacting Mr. Phillip Bishop at (916) 327-6440 or by e-mail at Phil.Bishop@boe.ca.gov prior to April 27, 2012. This will allow us to make alternative arrangements should the expected attendance exceed the maximum capacity of Room 122 and to arrange for teleconferencing.

Whether or not you are able to attend the above interested parties' meeting, please keep in mind that the due date for interested parties to provide written responses for consideration on this topic is May 18, 2012. Please be aware that copies of your submission may be provided to other interested parties. Therefore, please ensure your comments do not contain confidential information.

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Thank you for your consideration. I look forward to your comments and suggestions. Should you have any questions, please feel free to contact Mr. Phillip Bishop, at (916) 327-6440.

Sincerely,



Lynn Bartolo
Chief, Special Taxes and Fees Division
Property and Special Taxes Department

LB: pb

Enclosures

cc: Honorable Jerome E. Horton, Chairman, Fourth District
Honorable Michelle Steel, Vice Chair, Third District
Honorable Betty T. Yee, Member, First District (MIC 71)
Senator George Runner (Ret.), Member, Second District (MIC 78)
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel

Ms. Regina Evans, Board Member's Office, Fourth District
Mr. Robert Thomas, Board Member's Office, Fourth District
Mr. Joel Angeles, Board Member's Office, Third District
Mr. Neil Shah, Board Member's Office, Third District
Mr. Tim Treichelt, Board Member's Office Third District
Mr. Alan LoFaso, Board Member's Office, First District
Ms. Mengjun He, Board Member's Office, First District
Ms. Yvette Stowers, Board Member's Office, First District
Mr. Andrew Jacobson, Board Member's Office, First District
Mr. Sean Wallentine, Board Member's Office, Second District
Mr. James Kuhl, Board Member's Office, Second District
Mr. Lee Williams, Board Member's Office, Second District
Ms. Natasha Ralston Ratcliff, State Controller's Office
Ms. Kristine Cazadd
Mr. David Gau
Mr. Randy Ferris
Mr. Jeffrey L. McGuire
Mr. David Levine
Ms. Christine Bisuata
Mr. Stephen Smith
Mr. Todd Gilman
Mr. Robert Ingenito Jr.
Ms. Susanne Buehler
Mr. Randy Silva
Mr. Phillip Bishop

SECOND DISCUSSION PAPER

Proposed New Regulation and Amendments to Cigarette and Tobacco Products Licensing Act Regulations 4601, 4603, 4604, and 4605

I Issue

Should the Board of Equalization (Board) authorize publication of a new regulation to provide guidelines on the documentation and retention requirements for transfers of cigarettes and tobacco products between retail stores owned by the same legal entity?

In addition, should the Board amend existing regulations to clarify the issuance of a notice of suspension and notice of revocation, and to allow flexibility in reducing a suspension period?

II Staff Recommendation

Proposed Regulation Transfers of Cigarettes and Tobacco Products Between Retail Stores Owned by the Same Legal Entity

Staff recommends the adoption of proposed Regulation regarding Transfers of Cigarettes and Tobacco Products between Retail Stores owned by the Same Legal Entity. In satisfying the invoicing requirements of paragraph (a) of the proposed regulation, Staff recommends allowing copies of invoices at the receiving location to be maintained on alternative storage media as prescribed in Regulation 4901 (h), and have available at the receiving location equipment for viewing and reproducing the copies of the original invoices. This provision was not previously considered in the proposed Regulation. See Exhibit 1 for staff's proposed Regulation.

Regulation 4601 Service of a Notice of Violation or Warning Notice

Staff recommends amending Regulation 4601 so that the service requirements which presently apply to a Notice of Violation or Warning Notice will apply to any notice issued under the Cigarette and Tobacco Products Licensing Act (Act) and its Regulations. The proposed amendment was to incorporate only a Notice of Suspension or Notice of Revocation in Regulation 4601. Prior to the first interested parties meeting, staff from the program area suggested also incorporating a Notice of Conference or Notice of Decision in Regulation 4601. Other "Notices" may result from additions or amendments to the Cigarette and Tobacco Products Licensing Act (Act) and its Regulations. To satisfy the service for all notices, staff proposes amending Regulation 4601 to require that any notice issued under the Act be served in a manner prescribed for the service of a notice of determination, which is identical language currently employed in Regulation 4601. See Exhibit 2 for staff's recommended amendments to Regulation 4601.

Regulation 4603, Penalties for Licensed or Unlicensed Retailers; Regulation 4604, Penalties for Licensed or Unlicensed Wholesalers and Distributors; and Regulation 4605, Penalties for Licensed or Unlicensed Manufacturers and Importers

Staff recommends amendments to Regulations 4603, 4604, and 4605 to also allow for a suspension period of five (5) days. The current Regulations allow staff to reduce a suspension period to zero (0) days, ten (10) days or twenty (20) days. Prior to the interested parties meeting, staff proposed that the regulations be amended to allow staff to set the suspension period between a range of zero (0) days to twenty (20) days, but now seeks amending the regulations to

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include a five (5) day suspension period as opposed to a range of days from zero (0) to twenty (20). Proposed amendments also include adding references to the Business and Profession Code sections involving violations that mandate the revocation of a license and deletion of references to those Business and Profession Code sections that refer to violations which do not apply to the specific licensee, i.e., retailer, wholesaler, distributor, manufacturer or importer. See Exhibits 3, 4, and 5 for staff's recommended amendments to Regulations 4603, 4604, and 4605.

III Other Alternatives Considered

Proposed Regulation Transfers of Cigarettes and Tobacco Products Between Retail Stores Owned by the Same Legal Entity

Consider adopting a Regulation prohibiting the transfer of any cigarettes or tobacco products between retail locations owned by the same legal entity, and thereby creating a "bright line" as recommended by some interested parties.

Regulation 4601 Service of a Notice of Violation or Warning Notice

None considered.

Regulation 4603, Penalties for Licensed or Unlicensed Retailers; Regulation 4604, Penalties for Licensed or Unlicensed Wholesalers and Distributors; and Regulation 4605, Penalties for Licensed or Unlicensed Manufacturers and Importers

Make only technical corrections and do not amend the days currently specified in the regulations that staff may use to set a suspension period under the Act.

IV Background

On October 12, 2003, the State of California enacted the Cigarette and Tobacco Products Licensing Act (Assembly Bill 71, Horton [Chapter 890, Statutes 2003]) which established a statewide licensing program under Division 8.6 (commencing with Section 22970) of the California Business and Professions Code (B&P Code). The Act imposes licensing requirements on all retailers, wholesalers, and distributors of cigarettes and tobacco products and all manufacturers and importers of cigarettes. Assembly Bill 1749 (Chapter 501, Statutes 2006) added the same licensing requirements to manufacturers and importers of tobacco products. These licensing requirements are in addition to other permits and licenses that may be required depending on a person's business operations. The Act intended to address the problem of untaxed distributions and illegal sales of cigarettes and tobacco products in California and includes provisions for new recordkeeping requirements, identifies violations that may result in license suspensions and revocations and the imposition of civil and criminal penalties, and authorizes Board staff to inspect and seize any untaxed cigarettes or tobacco products. Inspections are performed by the Board's Investigations Division and its findings may result in the issuance of citations and penalties for violations.

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The Act authorizes the Board to administer and enforce the provisions of the Act and to prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of the Act's provisions. Since the inception of the Act, the Board has prescribed and adopted regulations to clarify the provisions with the intent to uniformly administer and enforce the provisions of the Act, and to provide guidance and clarity of the Act's provisions to licensed and unlicensed cigarette and tobacco product retailers, wholesalers, distributors, manufacturers, and importers.

Proposed Regulation Transfers of Cigarettes and Tobacco Products Between Retail Stores Owned by the Same Legal Entity

Based on recent citations and related appeals proceedings involving the seizure of cigarettes and tobacco products due to a retailer's failure to maintain proper documentation supporting the transfer of product from one licensed retail location to another licensed retail location owned by the same legal entity, the Special Taxes and Fees Division was asked to develop a new regulation to formalize the Board's existing policies regarding documentation requirements for the transfer of cigarettes and tobacco products between licensed retail locations owned by the same legal entity. Transfers of cigarettes and tobacco products between licensed retail locations owned by the same legal entity do not include sales of cigarettes and tobacco products between licensed retail locations prohibited by Revenue and Taxation Code section 30478.

Regulation 4601 Service of a Notice of Violation or Warning Notice

Regulation 4601, *Service of a Notice of Violation or Warning Notice*, adopted December 12, 2006, provides guidance to staff and licensees in regard to the service of the Notice of Violation and Warning Notice. Regulation 4601 was adopted in conjunction with Regulation 4600, *Issuance and Contents of a Notice of Violation or Warning Notice*, and instructs staff and licensees that the mailing of the Notice of Violation or Warning Notice to the cited person's last known address as it appears in the records of the Board will complete delivery of said notice. In lieu of mailing, the notice may be served by personal delivery to the person to be served and shall be deemed complete at the time of such delivery. Since adoption, staff has identified other notices identified in the Act and its Regulations that require service. Amendments to Regulation 4601 to provide a service mechanism for all notices required under the Act and its Regulations are recommended.

Regulation 4603, Penalties for Licensed or Unlicensed Retailers; Regulation 4604, Penalties for Licensed or Unlicensed Wholesalers and Distributors; and Regulation 4605, Penalties for Licensed or Unlicensed Manufacturers and Importers

Regulation 4603, *Penalties for Licensed or Unlicensed Retailers*; Regulation 4604, *Penalties for Licensed or Unlicensed Wholesalers and Distributors*; and Regulation 4605, *Penalties for Licensed or Unlicensed Manufacturers and Importers*, adopted December 12, 2006, provides staff with guidance regarding the assessment of penalties for a first offense of a violation and for subsequent violations of the Act by a licensed or unlicensed retailer, wholesaler, distributor,

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manufacturer or importer which would result in the issuance of a Warning Notice, suspension or revocation. Each regulation contains a subdivision that provides that a reduction in the length of a suspension period may be warranted if mitigating circumstances are present as set forth in Regulation 4606. Mitigating circumstances can be determined upon appeal at the Special Tax and Fees Division (which includes the former Excise Taxes Division) or Appeals Division level.

Any violation of the Act may result in either a criminal or civil citation. The Act authorizes the Board to impose civil penalties (suspensions or revocations or a license and/or fines) for violations of the Act. With few exceptions the civil penalties provided in the Act are not mandatory and therefore, the Board has discretion in determining the civil penalties to be imposed. Prior to adoption of these regulations staff had limited direction in imposing civil penalties of a discretionary nature, making administration of the Act difficult.

V Discussion

An interested parties meeting was held on March 6, 2012, to discuss the proposed regulation to the Act and amendments to existing Regulations 4601, 4603, 4604 and 4605 of the Act. Ms. Yvonne Walker, President of SEIU Local 1000 representing the Business Taxes Specialists and Business Taxes Compliance Specialists in the Investigation Division submitted a letter expressing their concerns with the proposed regulation and amendments to Regulations 4603, 4604 and 4605 that will be discussed below. Other interested parties at the meeting expressed both support for the regulation and amendments and opposition. Although subsequent submittals were not received from these interested parties, their views and concerns are discussed below.

Proposed Regulation *Transfers of Cigarettes and Tobacco Products Between Retail Stores Owned by the Same Legal Entity*

SEIU and other interested parties at the meeting on March 6, 2012, expressed concern that the Act does not provide for such transfers and that each retail location should purchase cigarettes and tobacco products directly from licensed distributors and wholesalers, thus creating a “bright line” for staff to follow during an inspection of the retail premise. Adoption of the regulation would create a loophole by allowing retailers to “blend” cigarette and tobacco products without tax with products that are tax paid.

Although the Act does not specifically provide for transfers of cigarette and tobacco products between retail locations owned by the same person the Act does not preclude it either. The Act requires that a retailer maintain purchase invoices that meet the requirements set forth in section 22978.4 of the B&P Code for all cigarettes or tobacco products the retailer purchased for a period of four years and that these records be maintained at the retail location for at least one year after purchase. Section 22978.4 prescribes invoicing requirements for distributors and wholesalers. Besides requiring distributor and wholesaler information, each invoice must contain the name, address and license number of the customer, an itemized listing of cigarette and tobacco products sold, date of sale, and the amount of excise taxes due to the Board by the distributor or a statement that reads: “All California cigarette and tobacco product taxes are included”. As noted previously, it is apparent that in the industry the practice of transferring

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cigarettes and tobacco products between retail locations owned by the same legal entity occurs at both large retailers with locations throughout the state and at smaller retailers with only a few locations.

To acknowledge the practice of transfers of cigarettes and tobacco products within this industry, the Board has adopted procedures allowing for the transfers of cigarettes and tobacco products between retail locations owned by the same person. These procedures acknowledge the blending concern and are designed to address them through requirements that copies of invoices be maintained at both locations and a transfer log or document be available detailing the amount of product, description of product, and license information of the transferring and receiving locations. The proposed Regulation is consistent with current Board policies and procedures and is intended to provide for consistent enforcement of the documentary requirements and also provide retailers with the documentation requirements for these types of transfers so as to avoid seizures of the transferred products, along with avoiding citations and fines that may be assessed against the retailer for improper documentation of these transfers.

In April 2011, Board staff provided guidance on these activities through an update to Publication 78, *Sales of Cigarettes and Tobacco Products in California*, and a letter sent to 1,790 legal entities owning multiple cigarette and tobacco products licensed retail locations.

Concerns were expressed from those interested parties representing retailers at the meeting who felt the proposed Regulation was too onerous and that it included some redundancy with respect to the transfer log or document requirements, such as requiring license information, along with location information, in addition to a copy of the invoice. Staff from our Investigation's Division, in an attempt to address some of these concerns, but to not weaken or create a loophole in the proposed Regulation's provisions, prepared an example of an acceptable transfer log (Exhibit 6) that may be used along with a copy of an invoice that would satisfy the documentary requirements of the proposed Regulation. In addition, staff recommends the proposed Regulation allow copies of invoices at the receiving location to be maintained on alternative storage media as specified in Regulation 4901 (h), Title 18 of the California Code of Regulations, and require that facilities and equipment to view the storage media be made available at the receiving location. The use of alternative storage media for documenting the original purchase invoice is common practice at many of the national chains that sell cigarettes and tobacco products. Staff believes including this provision is appropriate for consistent application of the documentation requirements throughout the industry.

In regards to blending, unfortunately due to the fungible nature of much of the tobacco products, one invoice could be used in an attempt to satisfy the invoicing requirements of purchases of tobacco products that were not tax paid whether via a transfer or via a direct purchase. As an example, if at the location there is never more inventory than product indicated on invoices documenting a tax paid purchase and the dates of that inventory reconciles with that of the invoices maintained, one would come to the conclusion that the product on the shelf was tax paid and purchased from a licensed wholesaler or distributor. However, purchases of the same

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product from an unlicensed person without the taxes included could be comingled with tax paid inventory without raising suspicion.

Regulation 4601 *Service of a Notice of Violation or Warning Notice*

Regulation 4601 adopted December 12, 2006, provides guidance to staff and licensees in regard to the service of the Notice of Violation and Warning Notice. Regulation 4601 was adopted in conjunction with Regulation 4600 *Issuance and Contents of a Notice of Violation or Warning Notice*. Prior to the Interested Parties Meeting of March 6, 2012, staff identified two additional notices -- Notice of Conference and Notice of Decision -- that staff serve as directed by the Act and its Regulations. Staff's initial recommendation was to amend the regulation in order to include similar regulatory guidance for serving a Notice of Suspension and Notice of Revocation. In order to provide staff with uniform guidance and licensees with consistent methods for service of any and all notices required under the Act and its Regulations, staff recommends that Regulation 4601, be amended to *Service of a Notice* and that that service be the same as that of the service of a Notice of Determination pursuant to Revenue and Taxation Code Section 30206 of the Cigarette and Tobacco Products Tax Law. Referring to Notice of Determination, which is the same language as what is currently included in Regulation 4601, is common practice for stipulating service requirements for "notices" throughout the Revenue and Taxation Code.

Regulation 4603, *Penalties for Licensed or Unlicensed Retailers*; Regulation 4604, *Penalties for Licensed or Unlicensed Wholesalers and Distributors*; and Regulation 4605, *Penalties for Licensed or Unlicensed Manufacturers and Importers*

Concerns were expressed at the interested parties meeting on March 6, 2012, by certain interested parties including SEIU, who were opposed to additional flexibility in setting the period of suspension. An argument was made that the minimum number of days of suspension should remain at 10 as it is a deterrent and allows ID to inspect 100 percent of those serving a suspension period. In addition any shorter period could put the wholesalers and distributors in jeopardy of violating the law by selling to someone during a short suspension period. Presumably certain wholesalers or distributors would not have the ability to cease selling cigarettes or tobacco products to retailers serving a short suspension period. It was further noted that Board costs could increase if a shorter suspension period were allowed due to the increased number of suspensions. One interested party suggested that they would possibly support reducing the suspension period if mitigating circumstances are delineated and dollar values of cigarettes or tobacco products are assigned to days.

The Act allows the Board, in addition to any applicable fines or penalties for a violation of the licensing provisions, upon first finding of a violation by a licensee, to suspend a license for **up to** 30 days. Upon notice of the suspension by the Board, the licensee shall immediately cease the sale of cigarettes or tobacco products until completion of the suspension period.

In April 2006, Regulations 4603, 4604, and 4605 were adopted to provide guidance regarding the assessment of penalties for a first offense of a violation and for subsequent violations of the Act by

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a licensed or unlicensed retailer, wholesaler, distributor, manufacturer or importer which would result in the issuance of a Warning Notice, suspension or revocation. Each regulation provides that a reduction in the length of a suspension period may be warranted if mitigating circumstances are present as set forth in Regulation 4606. Mitigating circumstances can be determined upon appeal at the Special Tax and Fees Division (which includes the former Excise Taxes Division) or Appeals Division level.

Pursuant to Regulation 4606, factors including, but not limited to, the following may be considered for purposes of determining whether mitigating circumstances exist to warrant a reduction in the length of a suspension period:

- (a) How recently the licensee purchased the business or began operations and acquired inventory of cigarettes and/or tobacco products.
- (b) The amount of cigarettes without stamps and with counterfeit tax stamps in relation to the size of the licensee's overall inventory.
- (c) The size of the licensee's cigarette and/or tobacco product business.
- (d) The retail value of any cigarettes or tobacco products seized.
- (e) An absence of prior seizures.

If a suspension period is reduced due to mitigating circumstances, current regulations only allow the reduction of a suspension period to be set at: 0 days, 10 days or 20 days. Staff seeks to amend the current regulations to also allow for a five (5) day suspension period.

During the period of March 2009 through October 2011, 546 appeals were heard by staff at the first level appeal of a violation of the Act that could result in up to a 30 day suspension. Based on these appeals, Staff reduced the suspension period in 240 instances to zero days based on mitigating circumstances and in two instances recommended no penalty. The remaining 304 appeals resulted in a 10 day, 20 day or 30 day suspension. Staff believes that had a 5 day suspension period been available, that many of these appeal cases, where staff reduced the suspension period to 0 days, may have resulted in a 5 day suspension. First level appeals staff in Special Taxes and Fees believe a 10 day suspension in many instances is too harsh based on the value of cigarette and tobacco products seized or the materiality of the seizure in terms of the operation and are more likely to impose a 0 day suspension. Staff holding the appeals conferences believe a 5 day suspension is more fitting of the violation in many of these instances. A 5 day suspension from selling cigarette and tobacco products is still a strong deterrent for any retailer who is in the business of selling cigarettes and tobacco products. Staff has also confirmed that a 5 day suspension period provides adequate time needed to visit the location and confirm compliance with the suspension. In addition, the added workload of potentially 3 to 4 additional inspections a month would be absorbable based on current staffing.

Wholesalers and distributors currently receive email notice from the Board when any licensee is suspended for 10, 20 or 30 days in addition for licensees who are revoked. Presumably

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wholesalers or distributors are able to cease selling cigarettes and tobacco products to licensees serving a 10 day or 20 day suspension period. Based on the original amended language, a range of days could have been as little as 1 or 2 days. Staff believes that the current recommendation to amend the Regulations to allow for a minimum of 5 days for a suspension period should not further jeopardize a wholesaler or distributor's ability to cease selling during a period of suspension.

Staff believes a 5 day suspension period in addition to the 0 day, 10 day and 20 day suspension period strikes a needed balance in administering the Act.

Staff believes setting suspension periods by further delineating by Regulation, criteria when mitigating circumstances are present, for such discretionary items as value, volume, or time in business would set too rigid a guideline as conditions change. Staff was seeking additional discretion when setting periods of suspension, specifically between the 0 day to 10 day range, not more rigidity when administering the Act.

Summary

Board staff proposes adoption of the proposed Regulation and the amendments to Regulations 4601, 4603, 4604, and 4605. Licensees and other interested parties are welcome to submit comments or suggestions regarding the proposed Regulation and amendments to Regulations 4601, 4603, 4604, and 4605, and are invited to participate in the second interested parties meeting scheduled for May 4, 2012.

Prepared by the Special Taxes and Fees Division, Property and Special Taxes Department

Current as of 04/05/2012

DRAFT – Proposed Regulation XXXX

Transfers of Cigarettes and Tobacco Products Between Retail Stores Owned by the Same Person.

Reference: Section 22971, 22974, 22974.3, and 22978.4, Business and Professions Code

(a) **GENERAL.** Every retailer of cigarettes and tobacco products is required to maintain purchase invoices for all cigarettes and tobacco products purchased and make those invoices available for inspection by the board or a law enforcement agency. A licensed retailer owning multiple locations who wishes to transfer cigarettes and tobacco products between its licensed locations shall prepare a transfer log or document at the time of transfer and maintain the records for four years from the date of transfer. A copy of the transfer log or document, accompanied by a copy of the original purchase invoice(s) documenting the purchase of each item transferred, must be kept at both the transferring and receiving locations involved in the transfer for at least one year after the transfer. Copies of original purchase invoices may be maintained at the receiving location on alternative storage media as prescribed in Regulation 4901 (h). The taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on alternative storage media.

(b) **SPECIFIC APPLICATION.** The transfer log or document shall show the following:

- (1) The transferring retail location, license information, supplier's name, invoice number, and the date the bulk cigarettes and tobacco products purchase was made;
- (2) The receiving retail location(s), license information, and date the cigarettes and tobacco products were transferred; and,
- (3) A legible itemized listing of cigarettes and tobacco products transferred including packaging (e.g., 20 5-packs; 60-ct boxes), flavor and/or style, and quantity transferred.

(c) The transfer of cigarettes and tobacco products shall only be allowed when the legal entity licensed as the retailer for the retail location transferring the cigarettes and tobacco products is the same legal entity that is licensed as the retailer at the retail location receiving the cigarettes and tobacco products. As an example, a transfer between a location licensed as a sole proprietorship and a location licensed as a partnership where the sole proprietor is one of the partners would not qualify under this section since the same legal entity does not own both locations.

(d) Records of the transfer shall be made available to the board or its authorized representative for examination upon request. Failure to provide such documentation when requested can result in the seizure of the cigarettes or tobacco products that are claimed to be transferred and the issuance of a citation. Transfer logs or documents created or provided after a seizure and/or citation are not acceptable and cannot be used for the return of seized product or dismissal of a violation.

Proposed Amendments Regulation 4601, Service of a Notice of Violation or Warning Notice

Reference: Sections 22974.7, 22978.7, 22979.7, Business and Professions Code.

Any notice issued under the Cigarette and Tobacco Products Licensing Act, may be served personally or by mail in the manner prescribed for service of a notice of determination under Revenue and Taxation Code Section 30206 of the Cigarette and Tobacco Products Tax Law. The Notice of Suspension, Notice of Revocation, Notice of Violation or Warning Notice shall be placed in a sealed envelope, with postage paid, addressed to the licensee or unlicensed person at his or her last known address as it appears in the records of the Board. The giving of notice shall be deemed complete at the time of deposit of the notice at a United States Post Office, a mailbox, sub post office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a Notice of Violation may be served personally by delivery to the person to be served and service shall be deemed complete at the time of such delivery. Personal delivery to a corporation may be made by delivery of a notice to any person designated to be served for the corporation with summons and complaint in a civil action, pursuant to the Code of Civil Procedure.

Proposed Amendments Regulation 4603, Penalties for Licensed or Unlicensed Retailers

Reference: Sections 22973, subdivision (a)(5), 22974, 22974.3, 22974.4, 22974.7, 22980.1, subdivisions (c), (d), (e), (g), 22980, subdivision (b), 22980.2, subdivision (a), 22980.3, subdivisions (a)(2), (d), Business and Professions Code.

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a retailer has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions shall result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) Business and Professions Code section 22974 (retailer's failure to retain purchase invoices).

(2) Business and Professions Code section 22980.1, subdivision (c), (d) or (e) (purchase from unlicensed person or person with suspended or revoked license).

(3) Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subdivision (b)).

(4) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by an unlicensed person or person with suspended or revoked license).

(b) A first offense of a violation of any of the following provisions shall result in the issuance of a 20-day suspension:

(1) Business and Professions Code section 22973, subdivision (a)(5) (retailer's false statement on application).

(2) Business and Professions Code section 22980, subdivision (b) (any person's refusal to allow inspection).

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above, shall result in both a 30-day suspension or revocation and a fine. The fine shall be determined in accordance with Regulation 4607.

(d) A violation of Business and Profession Code section 22974.3 (possession of unstamped cigarettes or untaxed tobacco products) shall result in the following:

(1) Notwithstanding paragraphs (2) and (3) below, a Warning Notice for a first offense when the licensee has been in business for less than one month and there has been no purchase of new cigarette or tobacco product inventory during that period.

(2) A 10-day suspension for a first offense for a seizure of less than 20 packages of cigarettes, or the equivalent amount of tobacco products based on wholesale cost.

(3) A 20-day suspension for a first offense for a seizure of 20 packages of cigarettes or more, or the equivalent amount of tobacco products based on wholesale cost.

(4) Both a 30-day suspension or revocation and a fine for a second or subsequent offense. The fine shall be determined in accordance with Regulation 4607.

(e) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, 5 days, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section 22974.3 subdivision (a)(2) or subdivision (a)(4), 22974.4, ~~22978.6~~, or 22980.3, subdivision (a)(2) or subdivision (d).

DRAFT

Proposed Amendments Regulation 4604, Penalties for Licensed or Unlicensed Wholesalers and Distributors

Reference: Sections 22974.7, 22977, subdivision (a)(5), 22978.1, 22978.2, ~~22978.7~~, 22978.5, subdivision (b), ~~22978.7~~, 22979.7, 22980, subdivision (b), 22980.1, subdivisions (b), (c), (d), (e), (f), (g), 22980.2, subdivision (a), and 22980.3, subdivisions (a)(2), (d) Business and Professions Code.

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a wholesaler or distributor has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions will result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) Business and Professions Code section 22978.1 (distributor's or wholesaler's failure to retain purchase invoices).

(2) Business and Professions Code section 22978.4, subdivision (c) (distributor's or wholesaler's failure to comply with invoice requirements).

(3) Business and Professions Code section 22978.5, subdivision (b) (distributor's or wholesaler's failure to retain sales records).

(4) Business and Professions Code section 22980.1, subdivision (b), (c), (d), (e) (sales to or purchases from unlicensed person or person with suspended or revoked license) or (f) (sales of cigarettes or tobacco products to retailer or wholesaler revoked or suspended until debts are clear).

(5) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by unlicensed person or person with suspended or revoked license).

(b) A first offense of a violation of any of the following provisions will result in the issuance of a 20-day suspension:

(1) Business and Professions Code section 22977, subdivision (a)(5) (distributor's or wholesaler's false statement on application).

(2) Business and Professions Code section 22980, subdivision (b) (any person's refusal to allow inspection).

(3) Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subdivision. (b)).

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above shall result in both a 30-day suspension or revocation, and a fine. The fine shall be determined in accordance with Regulation 4607.

(d) A violation of Business and Profession Code section 22978.2 (possession of counterfeit stamped cigarettes by distributors, unstamped cigarettes by wholesalers or untaxed tobacco products) shall result in the following:

(1) Notwithstanding paragraphs (2) and (3) below, a Warning Notice for a first offense when the licensee or unlicensed person has been in business for less than one month and there has been no purchase of new cigarette or tobacco product inventory during the month.

(2) A 10-day suspension for a first offense for a seizure of less than 20 packages of cigarettes, or the equivalent amount of tobacco products based on wholesale cost.

(3) A 20-day suspension for a first offense for a seizure of 20 packages of cigarettes or more, or the equivalent amount of tobacco products based on wholesale cost.

(4) Both a 30-day suspension or revocation and a fine for a second or subsequent offense. The fine will be determined in accordance with section 4607.

(e) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, 5 days, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section 22974.4, 22978.2, subdivision (a)(2) or subdivision (a)(4), 22978.6, or 22980.3, subdivision (a)(2) or subdivision (d).

Proposed Amendments Regulation 4605, Penalties for Licensed or Unlicensed Manufacturers and Importers

Reference: Sections 22974.7, ~~22978.7~~, ~~22979.4~~, 22979, subdivision (b)(1), ~~22979.4~~, 22979.5, subdivision (b), ~~22979.6~~, subdivision (c), 22979.7, 22980.1, subdivisions (a), (e), (f), 22980.2, subdivision (a), ~~22979.6~~, ~~subdivision (e)~~, ~~22980.3~~ subdivision (a)(2), (d), Business and Professions Code.

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a manufacturer or importer has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions will result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) Business and Professions Code section 22979.4 (importer's failure to retain purchase invoices on premises).

(2) Business and Professions Code section 22979, subdivision (b)(1) (participating manufacturer's false statement on certification to the Board).

(3) Business and Professions Code section 22979.5, subdivision (b) (manufacturer's or importer's failure to retain sales records on premises).

(4) Business and Professions Code section 22980.1, subdivision (a), (e) or (f) (purchases or sales from or to an unlicensed person or person with suspended or revoked license).

(5) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by unlicensed person or person with suspended or revoked license).

(6) Business and Professions Code section 22979.6, subdivision (c) (manufacturer's or importer's failure to comply with invoice requirements).

(b) A first offense of a violation of Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subdivision. (b)) shall result in a 20-day suspension.

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above shall result in both a 30-day suspension or revocation and a fine.

(d) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(e) Notwithstanding subdivisions (b) through (d) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, 5 days, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section ~~22974.4, 22978.6, or 22980.3~~, subdivision (a)(2) or subdivision (d).

**Sample Transfer Log
Cigarettes and Tobacco Products**

Store Transferring Product	Store Receiving Product	Date of Transfer	Items Transferred	Original Purchase From
A Street Market 123 A Street Anywhere, CA LRQ 91-000000	B Street Market 123 B Street Anywhere, CA LRQ 91-111111	March 2, 2010	50 packs Marlboro cigarettes, 100 5 boxes Romeo y Juliet Cigars (25 ea)	LD Tobacco Distributors LDG 90-222222 February 14, 2010
A Street Market 123 A Street Anywhere, CA LRQ 91-000000	B Street Market 123 B Street Anywhere, CA LRQ 91-111111	January 31, 2011	7 rolls Grizzly Long Cut, Mint (5ea) 2 packs Black & Mild cigars, wine flavor (5ea) 3 packs Black & Mild cigars, wine flavor, wood tip (5 ea)	S&W Wholesale SWQ 90-333333 December 27, 2010

Note: Transfer of cigarettes and tobacco products is allowed only when the legal ownership (as registered with the BOE) of the store transferring the product is the same as the legal ownership of the store receiving the product.

**Second Discussion Paper
SEIU Local 1000 Submittal****Exhibit 7**

March 20, 2012

The Honorable Betty Yee
Chair, Business Taxes Committee
Board of Equalization
450 N Street
Sacramento, CA 95814

YVONNE R. WALKER
President

M. CORA OKUMURA
Vice President
and Secretary-Treasurer

TAMEKIA ROBINSON
Vice President
for Organizing/Representation

MARGARITA MALDONADO
Vice President for Bargaining

Re: Cigarette and Tobacco Products Licensing Act

Chairwoman Yee:

SEIU Local 1000, representing the Business Taxes Specialists and Business Taxes Compliance Specialists in the Investigation Division at the Board of Equalization, writes to inform you of our concerns regarding the proposed new regulations and amendments to the Cigarette and Tobacco Products Licensing Act. The new regulations would allow for the transfer of cigarette and tobacco products between retail stores owned by the same legal entity.

Local 1000 believes that each retail location should purchase cigarette and tobacco products directly from licensed distributors and wholesalers only. This would ensure that California excise taxes are paid and that there would be no confusion as to which retailers have paid taxes and which have not. The new regulations would also create a loophole by allowing retailers to "blend" cigarette and tobacco products, essentially mixing products in which taxes were paid, with those in which taxes were not paid. This makes it nearly impossible to ensure that taxes are paid on all cigarette and tobacco products, as required by law.

SERVICE EMPLOYEES
INTERNATIONAL UNION

1808 14th Street
Sacramento, CA 95811
(916) 554-1200
(866) 471-SEIU (7349)
(916) 554-1275 (fax)
www.seiu1000.org



**Second Discussion Paper
SEIU Local 1000 Submittal**

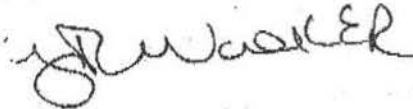
Exhibit 7

The Honorable Betty Yee
Re: Cigarette and Tobacco Products Licensing Act
March 21, 2012
Page 2 of 2

We also oppose the amendment of Regulations 4603, 4604 and 4605, which would shorten the period of suspension for violation of the California Cigarette and Tobacco Products Licensing Act. We believe that there should be a strong deterrent to those whom have been found in violation of this Act and the current regulations which give the Special Taxes and Fees Division the option of a 20-day, 10-day or zero day suspension, appropriate for such violations.

Thank you for your consideration. I look forward to speaking with you soon.

Sincerely,



Yvonne R. Walker
President

cc: Honorable Jerome E. Horton, Fourth District
Honorable Michelle Steel, Third District
Senator George Runner (Ret.), Second District
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel